

§4.1377

(g) The administrative law judge may only grant temporary relief if:

(1) All parties to the proceeding have been notified of the petition and have had an opportunity to respond and a hearing has been held if requested;

(2) The petitioner has demonstrated a substantial likelihood of prevailing on the merits; and

(3) Temporary relief will not adversely affect public health or safety or cause significant, imminent harm to land, air or water resources.

(h) Any party may file an appeal of an order or decision granting or denying temporary relief with the Board within 30 days of receipt of the order or decision or, in the alternative, may seek judicial review within 30 days in accordance with section 526(a) of the Act, 30 U.S.C. 1276(a). If an appeal is filed with the Board, the Board shall issue an expedited briefing schedule and shall decide the appeal expeditiously.

[59 FR 54326, Oct. 28, 1994, as amended at 67 FR 4368, Jan. 30, 2002; 67 FR 61512, Oct. 1, 2002]

§4.1377 Petition for discretionary review of initial decision.

(a) Any party may file a petition for discretionary review of an initial decision of an administrative law judge issued under §4.1375 with the Board within 30 days of receipt of the decision. An untimely petition shall be dismissed.

(b) The petition for discretionary review shall set forth specifically the alleged errors in the initial decision, with supporting argument, and shall attach a copy of the decision.

(c) Any party may file a response to the petition for discretionary review within 30 days of its service.

(d) The Board shall issue a decision denying the petition or granting the petition and deciding the merits within 60 days of the deadline for filing responses.

REVIEW OF OFFICE OF SURFACE MINING WRITTEN DECISIONS CONCERNING OWNERSHIP OR CONTROL CHALLENGES

SOURCE: 59 FR 54363, Oct. 28, 1994, unless otherwise noted.

43 CFR Subtitle A (10–1–07 Edition)

§4.1380 Scope.

Sections 4.1380 through 4.1387 govern the procedures for review of a written decision issued by OSM under 30 CFR 773.28 on a challenge to a listing or finding of ownership or control.

[67 FR 61512, Oct. 1, 2002]

§4.1381 Who may file; when to file; where to file.

(a) Any person who receives a written decision issued by OSM under 30 CFR 773.28 on a challenge to an ownership or control listing or finding may file a request for review with the Hearings Division, Office of Hearings and Appeals, U.S. Department of the Interior, 801 N. Quincy Street, Suite 300, Arlington, Virginia 22203 (telephone 703-235-3800) within 30 days of service of the decision.

(b) Failure to file a request for review within 30 days of service of the decision constitutes a waiver of review of the decision. An untimely request for review shall be dismissed.

(c) Where appropriate under the Administrative Dispute Resolution Act, 5 U.S.C. §§571-583, the Hearings Division may use a dispute resolution proceeding, if the parties agree to such proceeding, before the procedures set forth in §§4.1383 through 4.1387.

[59 FR 54363, Oct. 28, 1994, as amended at 67 FR 4368, Jan. 30, 2002]

§4.1382 Contents of request for review; response to request; amendment of request.

(a) The request for review shall include:

(1) A copy of the decision of OSM;

(2) A statement of the alleged errors in the decision and the facts that entitle the person requesting review to administrative relief;

(3) A statement whether the person requesting review wishes an evidentiary hearing or waives the opportunity for such a hearing;

(4) A request for specific relief; and

(5) Any other relevant information.

(b) Within 20 days of service of the request for review in accordance with 43 CFR 4.1109, OSM and all interested parties shall file an answer to the request for review or a motion in response to